

Arecibo Community Health Care, Inc. d/b/a Centro Medico de Arecibo and Union Nacional de Trabajadores de la Salud 1199, AFL-CIO.
Cases 24-CA-6047 and 24-CA-6157

December 14, 1990

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On August 10, 1990, Administrative Law Judge Robert W. Leiner issued the attached decision. The General Counsel filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order² as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Arecibo Community Health Care, Inc. d/b/a Centro Medico de Arecibo, Arecibo, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(d).

“(d) Post at its Arecibo, Puerto Rico place of business, both in English and Spanish, copies of the attached notice marked “Appendix.”³ Copies of the notice on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representatives, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.”

¹The appropriate unit, as described in sec. III of the judge's decision, is corrected to read “All the licensed male and female practical nurses”

²The General Counsel has excepted to the judge's recommended Order contending that the Respondent should be required to post the notice to employees in both Spanish and English. Noting that this case arose in Puerto Rico, the General Counsel asserts that the main language of the Respondent's employees is Spanish and though some can read English not all of them can be expected to do so. We find merit in this exception and we shall make the appropriate modification to the judge's recommended Order.

Antonio F. Santos, Esq., for the General Counsel.

Jose A. Oliveras, Esq., of Rio Pedras, Puerto Rico, for the Respondent.

Luis Alvarez Colon, President Local 1199, of San Juan, Puerto Rico, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT W. LEINER, Administrative Law Judge. This matter was heard on May 14, 1990, in Hato Rey, Puerto Rico, upon General Counsel's consolidated complaint¹ alleging, in substance, that the above-captioned Respondent, Arecibo Community Health Care, Inc., violated Section 8(a)(1) and (5) of the Act by refusing to engage in collective bargaining with the Union, upon the Union's May 9, 1989 request therefor; by thereafter, commencing July 3, 1989, unilaterally changing unit employees' terms and conditions of employment which were mandatory subjects of bargaining; and commencing December 13, 1989, refusing the Union's request to furnish to the Union certain information necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of unit employees. Respondent filed timely answers to the allegations of the complaint and otherwise denied the allegations in the amended complaint on the record of the hearing.

At the hearing, all parties were represented, given full opportunity to call and examine witnesses, submit oral and written evidence, and to argue on the record. At the close of the hearing, counsel for the parties waived both final argument and the right to submit posthearing briefs.

At the hearing, the Respondent withdrew, in their entirety, both its previously filed answers and its answer on the record denying the allegations of the amendments to the complaint. Respondent did so in order to facilitate the disposition of the substantive matters in the complaint allegations and to permit me to issue a decision and recommended order so that the parties could thereafter engage in good-faith collective bargaining upon issuance thereof.

On the entire record, including the pleadings, and the discussion and consent of all parties as contained in the transcript herein, I make the following

FINDINGS OF FACT

I. RESPONDENT AS STATUTORY EMPLOYER

Respondent, a Puerto Rico corporation engaged in management of health care facilities in Puerto Rico, at all material times has operated a hospital providing medical, surgical, and related health care services located at Arecibo, Puerto Rico. In the course and conduct of its operations, above described, Respondent derives, on an annual basis, gross revenues in excess of \$250,000 and annually purchases and receives at its Arecibo, Puerto Rico facility equipment, goods, and materials valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Puerto Rico. Respondent concedes that, at all material times, it has been and is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6),

¹General Counsel's original complaint and notice of hearing were issued and served on December 21, 1989. Respondent filed timely answers on February 21 and March 6, 1990. Pursuant to the filing of a further charge in Case 24-CA-6157, General Counsel issued a notice to amend the complaint and amendment on May 11, 1990. At the hearing, Respondent originally denied the allegations of the amended pleading on the record. The above-captioned Union's underlying first unfair labor practice charge was filed on November 7, 1989, and served on November 8, 1989 (Case 24-CA-6047); and the further charge (Case 24-CA-6157) was filed and served on May 10, 1990.

and (7) of the Act and that it is a health care institution within the meaning of Section 2(14) of the Act.

II. THE UNION AS STATUTORY LABOR ORGANIZATION

Respondent concedes, and I find, that, as alleged, Union Nacional de Trabajadores de la Salud 1199, AFL-CIO, has been and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE SUBSTANTIVE FINDINGS AND UNFAIR LABOR PRACTICES FOUND

The complaint alleges, and Respondent both in its original pleading and by its withdrawal of its answer, admits that the following groupings of employees at its Arecibo facility constitute units appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All registered male and female nurses and social workers employed by Respondent at Centro Medico De Arecibo; excluding executives, administrators, supervisors, employees of other appropriate units for collective bargaining, other professional employees not included in the appropriate unit, confidential employees, the employees of the Department of Health of The Commonwealth of Puerto Rico, employees of independent contractors, guards and all other persons authorized to hire, dismiss, promote, discipline or in any other way modify the status of employees or make recommendations to this effect, and supervisors as defined in the Act.

All the licensed and female practical nurses, X-Ray technicians, Respiratory Therapy Technicians, Dental Technicians, hospital attendants and/or escorts employed by Respondent at Centro Medico De Arecibo; excluding executives, administrators, supervisors, employees of other appropriate units for collective bargaining, or other professional employees not included in the appropriate unit, confidential employees the employees of the Department of Health of the Commonwealth of Puerto Rico, employees of independent contractors, guards and all those persons who in one way or the other, are authorized to hire, dismiss, promote, discipline or modify the status of the employees or make recommendations for this purpose, and supervisors as defined in the Act.

The complaint alleges, Respondent affirmatively admitted, and, on the basis of its withdrawn answer, I find that on August 29, 1986, a majority of the employees of Respondent in the above-described appropriate units, by a secret ballot election conducted under the supervision of the Puerto Rico Labor Relations Board (PRLRB), designated and selected the Union as their representative for the purposes of collective bargaining with Respondent; and on October 8, 1986, the PRLRB certified the Union as the exclusive collective-bargaining representative of all the employees of Respondent in the above units.

By virtue of Respondent's withdrawing its answers, I find that, as alleged, since on or about August 29, 1986, and continuously thereafter, the Union has been and is the representative for the purposes of collective bargaining of a majority of the employees in the above-described units, by virtue of

Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

I further find, on the basis of the allegations of the complaint and upon Respondent's withdrawal of its answer, that since on or about May 9, 1989, and continuously thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of Respondent's employees in the above units with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment; and since that date, and continuously thereafter, Respondent has failed and refused to meet and bargain with the Union for the purposes of collective bargaining in the units.

I further find, on the above basis, that on the dates appearing below, Respondent changed the existing terms and conditions of employment of its above-described unit employees, without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain with respect to such acts and conduct and with respect to the effects of such act and conduct:

(1) On or about July 3, 1989, Respondent changed the existing hospital and medical plan and selected a new hospital and medical insurance policy.

(2) On or about October 1, 1989, Respondent granted two paid days for continuing education purposes to its nursing personnel.

(3) On or about October 1, 1989, Respondent granted a 25-percent increase in wages paid to employees while on maternity leave.

(4) On or about October 1, 1989, Respondent granted two additional half-day holidays to its employees.

I find that, as alleged, the above matters changed by Respondent were changes in mandatory subjects of bargaining. Such conduct violates Section 8(a)(5) and (1) of the Act.

I also find that, as alleged, on or about December 13, 1989, the Union requested Respondent to furnish it with information concerning salaries, dates of employment, and fringe benefits of all employees in the above-described units and that since that time, Respondent has failed and refused to furnish to the Union the requested information. I find requested information, as alleged, is necessary for, and relevant to, the Union's performance of its functions as the exclusive collective-bargaining representative of the unit. Respondent's refusal of the Union's request for such information violates Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By refusing to bargain with the Union at the Union's request, commencing May 9, 1989, with regard to unit employees' rates of pay, wages, hours of employment, and other terms and conditions of employment and, commencing July 3, 1989, by changing existing wages, holidays, and other terms and conditions of employment, all mandatory subjects of bargaining, without prior notice to the Union or permitting the Union an opportunity to negotiate and bargain with respect thereto or the effects thereof on the employees in such units, Respondent violated Section 8(a)(5) and (1) of the Act.

2. By failing and refusing, commencing December 13, 1989, to furnish to the Union, at the Union's request, information regarding the salaries, dates of employment, and fringe benefits of employees employed by Respondent in the above-described appropriate units, which information is necessary for, and relevant to, the Union's performance of its functions as the exclusive bargaining representative of employees in the units, Respondent violated Section 8(a)(5) and (1) of the Act.

3. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has committed various unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act in the manner customary in such cases.

Having found that Respondent unlawfully refused to bargain with the Union in appropriate units after the Union requested such bargaining with respect to mandatory subjects of bargaining; and having separately found that Respondent, without affording the Union prior notice thereof of an opportunity to bargain with respect thereto and the effects thereof, engaged in unilateral changes of wages, holidays, and other mandatory subjects of bargaining, I shall recommend that Respondent be ordered to cease and desist from such actions. I shall further order Respondent to affirmatively notify the Union of its willingness to bargain in good faith and, on the Union's request, to rescind and revoke, in whole or in part, the unilateral acts found to have constituted violations of Section 8(a)(1) and (5) above, and to furnish the Union with the requested information which, in violation of the Act, Respondent has failed and refused to furnish. I shall also recommend the posting of an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Arecibo Community Health Care, Inc. d/b/a Centro Medico de Arecibo, Arecibo, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing, on request, to bargain in good faith collectively with Union Nacional de Trabajadores de la Salud 1199 AFL-CIO (the Union), as the representative of Respondent's employees in the two following appropriate units, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All the registered male and female nurses and social workers employed by Respondent at Centro Medico de Arecibo; excluding executives, administrators, supervisors, employees of other appropriate units for collective bargaining, other professional employees, not included in the appropriate unit, confidential employees, the employees of the Department of Health of the Com-

monwealth of Puerto Rico, employees of independent contractors, guards and all other persons authorized to hire, dismiss, promote, discipline or in any other way modify the status of employees or make recommendations to this effect, and supervisors as defined in the Act.

All the licensed male and female practical nurses, X-Ray technicians, Respiratory Therapy Technicians, Dental Technicians, hospital attendants and/or escorts employed by the Respondent at Centro Medico de Arecibo; excluding executives, administrators, supervisors, employees of other appropriate units for collective bargaining, or other professional employees not included in the Department of Health of The Commonwealth of Puerto Rico, employees of independent contractors, guards and all those persons who in one way or the other, are authorized to hire, dismiss, promote, discipline or modify the status of the employees or make recommendations for this purpose, and supervisors as defined in the Act.

(b) Changing the existing terms and conditions of employment of employees in the above-described appropriate units by changing the hospital medical plan and selecting a new hospital and medical insurance policy; granting paid days for continuing education purposes to nursing personnel; granting a 25-percent wage increase to employees; or by any other unilateral change in mandatory subjects of bargaining without affording the Union prior notice thereof and an opportunity to negotiate and bargain with respect thereto.

(c) Failing and refusing, on the Union's request, to furnish to the Union information necessary for, and relevant to, the Union's performance of its functions as the exclusive collective-bargaining representative of employees in the above-described appropriate units.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Union, in writing, of Respondent's willingness to bargain collectively in good faith with the Union as the exclusive representative of its employees in the above-described appropriate units, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if understandings are reached, embody such understandings in a signed agreement or agreements.

(b) Rescind and withdraw, at the Union's request, all or part of the unilateral changes set forth above, in which Respondent engaged, commencing July 3, 1989.

(c) Provide the information requested by the Union on or about December 13, 1989, concerning the salaries, dates of employment, fringe benefits of employees employed in the above units, and any other information requested by the Union which is necessary for and relevant to the performance of its functions as exclusive collective-bargaining representatives of the employees in the above appropriate units.

(d) Post at its Arecibo, Puerto Rico place of business copies of the attached notice marked "Appendix."³ Copies of

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Rela-

the notice on forms provided by the Regional Director for Region 24, after being signed by Respondent's authorized representatives, shall be posted by Respondent immediately upon receipt and maintained for 60 days consecutive in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

tions Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with Union Nacional de Trabajadores de la Salud 1199, AFL-CIO, as the exclusive representative of our employees in the below-described appropriate units with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if agreement is reached, to sign a contract or contracts:

All the registered male and female nurses and social workers employed at Centro Medico De Arecibo; excluding executives, administrator, supervisors, employees of other appropriate units for collective bargaining, other professional employees not included in the appropriate unit, confidential employees, the employees of the Department of Health of The Commonwealth of Puerto Rico, employees of independent contractors, guards and all other persons authorized to hire, dismiss, promote, discipline or in any other way modify the status of employees or make recommendations to this effect, and supervisors as defined in the Act.

All the licensed male and female practical nurses, X-Ray technicians, Respiratory Therapy Technicians, Den-

tal Technicians, hospital attendants and/or escorts employed at Centro Medico De Arecibo; excluding executives, administrators, supervisors, employees of other appropriate units for collective bargaining, or other professional employees not included in the appropriate unit, confidential employees, the employees of the Department of Health of The Commonwealth of Puerto Rico, employees of independent contractors, guards and all those persons who in one way or the other, are authorized to hire, dismiss, promote, discipline or modify the status of the employees or make recommendations for this purpose, and supervisors as defined in the Act.

WE WILL NOT, without prior notice to the Union and affording the Union an opportunity to negotiate and bargain, unilaterally, change existing terms and conditions of employment of unit employees, including changing the existing hospital and medical plan and selecting a new hospital and medical insurance policy; granting paid days for continuing education to nursing personnel; granting a 25-percent increase in wages to employees on maternity leave; or grant additional half-day holidays to employees; or change any other mandatory subject of bargaining.

WE WILL NOT refuse to furnish to the Union, at the Union's request, information regarding the salaries, dates of employment, or fringe benefits of our employees in the above units, or any other information requested by the Union which is necessary for and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of unit employees.

WE WILL notify the Union, in writing, that we will recognize and bargain with the Union collectively in good faith as the exclusive representative of our employees in the above appropriate units with respect to wages, hours, and other terms and conditions of employment and, if agreements are reached, to sign such agreements.

WE WILL, at the Union's request, revoke and rescind, to the extent requested, all unilateral changes, above described, in the wages, rates of pay, hours, and other terms and conditions of employment of our unit employees.

WE WILL furnish to the Union information it requested with regard to our unit employees salaries, dates of employment, and fringe benefits.

ARECIBO COMMUNITY HEALTH CARE, INC.
D/B/A CENTRO MEDICO DE ARECIBO